IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 293 of 2000.

Judgement reserved on 3.9.2007.

Date of decision: 14.9.2007.

State of H.P. ….. **Appellant.**

Vs.

Inder Dutt …. **Accused- respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. M.L.Chauhan, Addl. Advocate General.

For the Respondent : Mr. Ramakant Sharma, Advocate.

Kuldip Singh, Judge.

This appeal is directed against the judgement of acquittal, dated 17.12.1999, recorded by the learned Chief Judicial Magistrate, Solan, in Criminal Case No. 162/2 of 1993.

2. The facts in brief are that Inder Dutt accused was prosecuted for having committed offence under Section 324, 506 IPC. The allegations against him are that on 2.5.1993 at about 8.30 p.m. at place Shaya under Police Station, Dharampur while complainant Prem Singh was taking water from tap, the accused turned up there and asked the complainant to remove his tin, which was placed under the tap. The accused removed the tin belonging to the complainant and also attacked him with a knife, causing injuries on the chest of the complainant. PW 7 Hira Devi was on the spot and is a witness to the incident. The accused had also criminally intimidated the

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Whether the reporters of the local papers may be allowed to see the Judgment?

complainant. A rapat, Ex. PW 5/A, was recorded at Police Post, Dagsai and subsequently FIR Ex. PW 9/A was registered at Police Station, Dharampur. The injured was medically examined, vide MLC Ex. PW 4/A. After completion of investigation, challan was put up in the court and accused was charged under Sections 324, 506 IPC.

3. The prosecution examined nine witnesses. The statement of accused was recorded, under Section 313 Cr.P.C, he took up the plea that he has been falsely implicated in the case. It is the case of the accused that complainant gave him beatings and the matter was reported to the police, vide rapat Ex. PW 5/C. The learned Chief Judicial Magistrate acquitted the accused, hence State is in appeal.

4. I have heard the learned counsel for the parties and gone through the record. The learned Additional Advocate General has submitted that the court below has not properly appreciated the material on record. The prosecution has proved the case against the accused. The learned counsel for the respondent- accused has supported the impugned judgement and submitted that accused has been falsely implicated in the case. In fact, it was the complainant who gave beatings to the accused and to this effect matter was reported to the police, vide rapat Ex. PW 5/C. He has submitted that a possible view has been taken by the court below on the basis of the material on record.

5. The complainant Prem Singh has appeared as PW 1 and has stated that injuries were inflicted by accused on his person with knife. In rapat Ex. PW 5/A, on the basis of which FIR Ex. PW

9/A, was recorded, there is no reference of knife. In rapat, it has been alleged that he was hit by some object on chest which he could not identify due to darkness. It is not understandable that when the complainant could not make out at the time of alleged attack with what object the injuries were inflicted on his person, how could he later on came to know that injuries on his person were inflicted with knife. In his statement in the court, the complainant has stated that his tin was removed by the accused on the ground that he (the complainant) belongs to scheduled caste but there is no reference to this effect again in rapat Ex. PW 5/A. The complainant gave some version in his rapat Ex. PW 5/A but when he appeared in the court as his own witness, he made material improvements in his statement. This creates suspicion in the prosecution story. Moreover, in rapat Ex. PW 5/A the complainant has specifically stated that at the time of alleged occurrence, Hira Devi was present on the spot. Hira Devi has appeared as PW 7 and stated that nothing happened in her presence. She was declared hostile and was cross-examined by the prosecution.

6. It is the case of the accused that he did not give any beatings to the complainant. In view of trend of cross-examination of the complainant, it emerges that it is the case of the defence that complainant sustained injuries on account of fall. The complainant was medically examined by PW 4 Dr. Radha Chopra, who issued MLC Ex. PW 4/A. The Doctor in her cross-examination has stated that the injuries, in question, sustained by the complainant are possible by fall on a hard pointed object. It has come on record that

on the spot there were stones. Thus possibility of complainant sustaining injuries due to fall cannot be ruled out.

7. In Ex. PW 5/C, it has been alleged that accused was hit by the complainant with "Behangi". PW 9 Baldev Ram, SI in his cross-examination has admitted that Inder Dutt was medically examined and his MLC is on the case file. The injuries on the person of accused have not been explained by the prosecution. PW 2 Guna Ram turned hostile and he did not support the prosecution. PW 3 Khazana Ram has stated that Prem told him that Inder Dutt had given beatings to him. Thus, PW 3 is not an eye witness to the incident, his statement is just hear say evidence. PW 6 Ram Dayal has stated that some quarrel had taken place between Inder Dutt and Prem Singh. He did not support the prosecution and he was declared hostile. PW 8 Kanta Devi has also stated that she has not seen Inder Singh and Prem Singh quarreling. There is no worth believing evidence on record that accused threatened or criminally intimidated the complainant. The learned Chief Judicial Magistrate has considered the material on record properly and has drawn correct inference. The prosecution has failed to make out any case for interference.

8. The result of the above discussion, the appeal is dismissed.

September 14,2007. **(Kuldip Singh)**
(*Hem*) **Judge.**